

13. (SBU) The Vedan case has made headlines since the story broke in September of last year after the Ministry of Natural Resources and Environment (MoNRE) sent a special team to inspect projects along the Thi Vai River, including Vedan (REFTEL). Mr. Phan Van Het, Vice Director of the Department of Natural Resources and Environment (DoNRE) in Dong Nai province, told ConGen Off the team found that Vedan had surreptitiously added nine new projects to its complex without having applied for

licenses or undergoing any of the required environmental assessments. Inspectors also found that Vedan had run pipelines from factories directly into the river, completely bypassing the onsite waste management system.

The Vedan Case Pits Development Against Environment

4.(SBU) Vedan is a Taiwanese-invested company specializing in the production of Monosodium Glutamate (MSG). According to Vedan General Manager H.K. Yang, Vedan obtained a license in 1992 (one year before Vietnam's old environmental law was enacted) to construct its 129 hectare complex in Long Thanh district of Dong Nai province. Before the scandal broke last year, Vedan was in some ways considered a model corporate citizen. Vedan employs more than 2,600 people in the Long Thanh complex, many of them former fisherman who joined Vedan's ranks in 1995 under a company program to provide local general assistance. Vedan also prides itself on helping 600,000 farmers' livelihoods by buying local raw materials, such as cassava and molasses, for its MSG production.

Investigators Clarify River Dumping Scheme, Eventually

5.(SBU) Vedan's Yang told ConGen EconOff that the direct pipeline for river dumping had existed since 1994, shortly after Vedan began operations in the Long Thanh complex. He said they had built the pipeline to transport waste onto ships for "ocean dumping," a practice that they had used in China and Japan. The GVN rejected the "ocean dumping" technique, saying it flouted international conventions on environmental protection. Despite this refusal, Vedan's pipeline stayed intact. According to media reports, Vedan kept a series of pipelines well-hidden under the ground to escape detection, discharging as much as 105,600 cubic meters of untreated wastewater into the Thi Vai River every month over many years. When EconOff asked Mr. Yang whether these allegations were true, Mr. Yang said that some of Vedan's staff might have dumped waste into the river "every now

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and then," but he emphasized that it was "not every week."

6.(SBU) Despite Vedan's economic contributions to the province, once the media caught wind of the violations discovered by MoNRE's special inspection team, there were vocal calls from many different sectors, including the Prime Minister, to shut Vedan down completely. Thanh Nien newspaper reported local DoNRE officials as saying they had no idea that Vedan was hiding pipelines to dispose waste. However, DoNRE's Mr. Het told EconOff that DoNRE knew all along that Vedan's waste management system did not meet national standards. He said that Vedan had applied for licenses and environmental reports through the Ministry of Natural Resources and Environment (MoNRE) in Hanoi and yearly inspections were conducted either independently by DoNRE or in conjunction with MoNRE. Mr. Het wouldn't address directly why DoNRE did not crack down on Vedan sooner if it knew the company was not in compliance with environmental regulations, but indicated that it was MoNRE's responsibility since it had issued the licenses.

7.(SBU) In spite of the public outcry, the GVN did not try to force Vedan out, instead imposing administrative fees of \$15,000 for operating without a license and \$7.7 million in retroactive environmental protection fees. In addition, Mr. Het said Vedan was forced to destroy its pipeline system and to cut back the 40% of its operations for which it never received permission. Vedan will not be allowed to operate at full capacity until it completes all outstanding environmental procedures, which it is now close to achieving. According to Mr. Yang, Vedan has spent almost \$30 million to upgrade and install new waste treatment facilities, including a \$9 million waste solidifier from Germany and a \$10 million concentration facility, both of which will be operational by the end of October 2009.

Farmers Still Have Fish to Fry

8.(SBU) Mr. Het said that DoNRE and provincial authorities are

awaiting results of an independent assessment by the Institute of Environment and Natural Resources at HCMC National University that will determine the scope, area, duration and level of damage inflicted by Vedan. DoNRE will use the results of the assessment, in addition to fishermen's claims, to determine how much to seek from Vedan in compensation. However, the Farmers' Associations in the three provinces along the Thi Vai River did not wait for the assessment to be completed before they began seeking compensation from Vedan. According to Mr. Quang, the Vice Director of the Dong Nai Farmer's Association, the FA has received 4,647 letters from groups in Dong Nai alone, including fish farm owners, invested fish catchers and small-scale fishermen.

9.(SBU) Vedan initially agreed to an MOU with the Farmers' Associations to discuss the "principal, scope of recipients, and the level of compensation." However, that's about the only thing they've been able to agree on up to this point. Mr. Quang said that Vedan had offered the farmers a miniscule \$1.4 million "assistance fund" to encourage job transformation and agricultural promotion. In addition, they offered a "direct assistance package" of \$1.1 million, always making clear the separation between assistance and compensation. Mr. Quang said that Vedan set strict stipulations on potential fund recipients: they must have a formal title, legal evidence for their investment, proof that the damage is both real and caused by Vedan, and they cannot be among those that received assistance from Vedan in 1995.

Muddy, Muddy Waters

10. (SBU) Mr. Quang said that with all those criteria, the fishermen wouldn't need an Association to back them up since they would be better off suing Vedan directly through the courts. He explained that most fishermen do not have formal titles or proof of investment, but nonetheless have been seriously impacted by Vedan's environmental violations. In fact, based on the fishermen's claims and assessments, Vedan has inflicted at least \$70 million worth of damage. DoNRE noted that although many of the fishermen have legitimate claims, there are probably a good number of profiteers that have simply jumped on the bandwagon hoping to cash in on the deal. He referenced a seafood processor upstream from Vedan and several rice and cashew farmers making claims that have never even used

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water from the Thi Vai River due to its 50% salt content.

11. (SBU) Mr. Quang also acknowledged that some of the claims may be unjustified, which is the reason that the FAs agreed to seek only 45% of the desired compensation from Vedan. Vedan's Mr. Yang said he has no idea how the Farmers' Associations came up with the figure of 45%, but even cut by that much, it still amounts to \$35 million, which is far more than Vedan is able to pay out. While Vedan wants to take responsibility and right its wrongs, it will not do so without a single piece of evidence of the damage or proof that Vedan is the culprit.

12.(SBU) Mr. Yang welcomes an independent assessment of the damage, but is concerned that Vietnam lacks the technical expertise to carry out a meaningful, valid study of such complexity. He said that the institute MoNRE has charged with conducting the study is using a "Mac 21 method," but does not have any prior experience with that method. Vedan has tried unsuccessfully to get the GVN to allow the institute to partner with a Taiwanese research entity familiar with the method. Meanwhile, MoNRE is pushing to meet its end of September research deadline rather than waiting the six months the method would require. Thus, Mr. Yang said, even once "independent" results are determined, their validity may still be questionable.

A Hairy Scapegoat?

13. (SBU) There is a Vietnamese saying that "the guy with hair is easier to catch than the bald one," and Mr. Yang surmises

that it is precisely because Vedan has been so successful in Vietnam that the media has focused attention on this case and made his company a scapegoat. Mr. Yang lamented that despite being interviewed many times, Vedan's version of events never appears in the media. He finds this unfair when Vedan is far from alone among companies - both foreign and domestic - that have violated Vietnam's environmental regulations. There are close to 300 other companies operating along the Thi Vai River and Mr. Yang said there's no way that Vedan is the only one responsible for the environmental damage. As obvious proof that not all pollution in the Thi Vai is from Vedan, he points to the fact that heavy metals have been detected in the river water but that Vedan does not use any in its processes.

¶14. (SBU) Mr. Yang further noted that part of the reason Vedan set up operations along the Thi Vai River in the first place is because GVN had told Vedan in 1994 that the Thi Vai River's salt content made it unsuitable for agricultural irrigation. According to Mr. Yang, GVN had claimed that it would be used exclusively as an industrial river, emphasizing its close access to Cai Med deep-water port (which is itself a heavy source of river pollution).

Contradictory Messages and Limits of the Law

¶15. (SBU) Contradictory messages from different government entities and the media, Mr. Yang said, make doing business in Vietnam frustrating. Changing regulations are also a source of confusion and cost for companies. For example, Mr. Yang said that since Vedan first began operations in Vietnam, the environmental laws have changed twice, each time with much stricter standards. Instead of having a timeline for gradual compliance, such as phasing in new requirements over a five to 10 year period, GVN simply changed the law in 2005 and expected companies to comply immediately, without considering the huge costs that come with such adjustments. He emphasized the fact that if environmental standards are too strict or there is not sufficient time or means for compliance, companies are inclined to find ways around them. Mr. Yang also noted that authorities seem to implement regulations on an ad hoc basis, depending on the province.

¶15. (SBU) Sometimes implementation of the law is not possible simply because the implementing decrees do not exist. Although the 2005 Environmental Law allows for criminal penalties of big polluters and media reports had made reference to GVN applying these penalties, Mr. Het of DoNRE said that none of the implementing decrees or articles have yet been established. Since administrative penalties are too low, one strategy the agency has been using as an alternative to "punish" polluting companies is to categorize them according to their violations

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(heavy, medium, and light) and then publicize them to the media. For example, of the 218 projects that were inspected in 2008, 80 were publicized in the media as medium or heavy polluters. Mr. Het said such a public strategy has a strong disincentive affect on companies who are shamed into compliance.

Comment

¶17. (SBU) Comment: The case of Vedan is both a classic example of the difficulty in finding the balance between promoting economic development while also preserving the environment and a an example of the even greater difficulty posed by trying to improve older regulations after industrial plants have already been built. Particularly because Vedan representatives are certainly correct when they assert that they are not the only source of pollution in the Thi Vai river and thus should not be expected to fully compensate every farmer and fisherman who has suffered losses due to pollution, the case also raises questions of how to adjudicate tort claims when rule of law is weak. While the GVN's activism on this case certainly reflects growing sensitivity to environmental issues, it could also reflect a desire to avert public attention from long-term, systemic failures by GVN agencies charged with protecting the

environment. Although government agencies ultimately went after Vedan, questions remain as to why it took the GVN 14 years to do so, particularly if local authorities, as DoNRE claimed, knew all along that Vedan's operations did not meet standards. In addition to what appears to have been a lack of political will to go after polluters such as Vedan, a lack of technical expertise also impeded quick resolution as there is not yet an accepted methodology for measuring toxic waste. While there is no easy resolution to this thorny problem, there is a silver lining for U.S. producers and exporters of environmental protection and waste management equipment. An increasing number of Vietnamese companies are seeking Mission's assistance to identify U.S. environmental product and service providers, to find partners to teach waste management in vocational schools, and to help them influence the development environmental standards in Vietnam. End Comment.

118. (U) This cable was coordinated with Embassy Hanoi.
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